

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q67618

Herve SAINCT

Appln. No.: 10/009,573

Group Art Unit: 2618

Confirmation No.: 9696

Examiner: Sharma, Sujatha R.

Filed: December 12, 2001

For: AN AIRCRAFT FLYING AT HIGH ALTITUDE TO SERVE AS A RADIO RELAY,
AND A METHOD OF GETTING THE AIRCRAFT ONTO STATION

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest is ALCATEL-LUCENT by virtue of an assignment executed by Hervé Sainct to Alcatel, on November 22, 2001, and as a result of a merger of Alcatel and Lucent Technologies earlier in 2006.

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II. RELATED APPEALS AND INTERFERENCES

To the best of the knowledge and belief of Appellants, the Assignees and the undersigned, there are no other appeals or interferences before the Board of Appeals and Interferences (“the Board”) that will directly affect or be affected by the Board’s decision in the present Appeal.

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III. STATUS OF CLAIMS

Claims 2-7 and 9 are all the claims pending in the application, each of which is rejected.

Claims 5-7 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Baum (WO 97/15992) in view of Gilhousen (U.S. Patent 5,559,865).

Claims 2-4 are rejected under 35 U.S.C. § 103(a) as unpatentable over Baum (WO 97/15992) and Gilhousen (U.S. Patent 5,559,865) in view of Wong (WO 97/33790).

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IV. STATUS OF AMENDMENTS

An *Amendment and Request for Reconsideration Under 37 C.F.R. § 1.116* was filed on July 31, 2006, in response to the Final Office Action dated January 30, 2006. In that Amendment claim 7 was amended, however, the Examiner did not enter the claim amendment. Accordingly, the amendment to claim 7 remains unentered.

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V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 7 is the only independent claim on appeal.

Claim 7 is directed to a method of replacing an existing radio relay in a telecommunications network comprising a plurality of radio relays. Figure 2 shows an embodiment of a system that can perform the method, which is described in the specification beginning at page 5, line 36.

As shown in figure 2, an aircraft (1) containing a radio wave transceiver means 15 can be used to replace an existing radio relay, such as a satellite 10. See pg. 8, lines 13-18. The aircraft (1), as seen in figures 1 and 2, is taken to an altitude and a position such that it lies in the same direction relative to users (11) and (12) as the satellite relay (10) that is to be replaced. This makes it possible to avoid having the users change the pointing of their antennas. See pg. 8, lines 24-30.

The aircraft (1) is lifted to its station by a balloon (3) into the high atmosphere, such as the stratosphere, at an altitude (H). See pg. 6, line 4 and figure 1. The aircraft (1) includes a propulsion means (2) that is capable of keeping, moving, and steering the aircraft solely in the high atmosphere. See page 6, lines 7-9 and page 1, lines 6-11. Examples of the propulsion means include a plasma thruster 2 which operates on the basis of plasma created from the surrounding air in the high atmosphere. The propulsion means can also be of the propeller type. See pg. 6, lines 9-13.

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The method of claim 7 includes replacing the existing radio relay (10) by an aircraft (1) of the airplane or glider type which has propulsion means (2) enabling said aircraft (1) to maintain itself, to move itself, and to orient itself solely at high altitude. This step is shown in figure 2 and described at least at page 6, lines 6-13.

The aircraft is provided with a transceiver means (15) for radio waves (16, 17), as shown in figure 2. The method also includes taking the aircraft (1) to an altitude and a position such that said transceiver means (15) lies in the same direction, relative to at least one user (11, 12) of the telecommunications network (RT), as the replaced relay (10), as shown in figure 2. With operation between the transceiver means (15) in aircraft (1) and users (11, 12) being performed via an already existing interface without modification thereof, the need to modify the pointing direction of a users' antenna is avoided. See page 8, line 30.

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether or not claims 5-7 and 9 are unpatentable under 35 U.S.C. §103(a) as being obvious over Baum (WO 97/15992, hereinafter “Baum”) in view of Gilhousen (U.S. Patent 5,559,865, hereinafter “Gilhousen”).
2. Whether or not claims 2-4 are unpatentable under 35 U.S.C. §103(a) as being obvious over Baum and Gilhousen in view of Wong (WO 97/33790, hereinafter “Wong”).

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VII. ARGUMENT

Appellant respectfully requests the Board to reverse the rejections of claims 2-7 and 9 for at least the reasons discussed below.

1. Claims 5-7 And 9 Are Not Rendered Unpatentable Under 35 U.S.C. §103(a) As Being Obvious Over Baum In View Of Gilhousen.

Claims 5-7 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Baum in view of Gilhousen. Appellant submits that even if the teachings of the references were combined as asserted in the final Office Action, all the limitations of the claims would not be satisfied and hence, the combination does not render the claims unpatentable.

a. The Prior Art – Baum and Gilhousen

Baum is directed to a lighter-than-air platform, referred to as a strato state platform (SSP), that floats in the stratosphere and carries a communication package. See Abstract. The SSP is comprised of balloons that provide lift for the SSP. See page 5, lines 21-26 and figures 1-11. Baum discloses the use of a navigation means that includes propulsion units such as propellers driven by electric motors that are used during launch and deployment of the SSP. See page 6, line 23 through page 7, line 3, and page 13, lines 8-10 and 19-27.

Gihousen relates to cellular radiotelephone communications between an airplane and a ground based station. See col. 1, lines 7-10. Specifically, Gilhousen is directed to improving cellular telephone communications aircraft passengers experience when flying on airline-type aircraft. See col. 1, lines 12-16. Gilhousen describes a problem when using a radiotelephone on a typical passenger airplane in which the passenger's radiotelephone communicates directly with

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radiotelephone base stations (“cells”) on the ground. See col. 1, lines 17-28. Gilhousen explains that because an airline passenger’s radiotelephone communicates directly with various base stations on the ground, problems can occur since the passenger’s radiotelephone does not register with the ground based system. For example, the airline passenger cannot receive calls because the ground based system does not know where to forward the passenger’s calls. See col. 1, lines 28-35. Another problem Gilhousen discusses is that the aircraft radiotelephone system does not perform hand-offs between cells as is done in ground based cellular systems when the phone reaches the edge of a cell. This results in calls being dropped when the aircraft reaches the limit of the cell’s coverage. See col. 1, lines 36-48.

Gilhousen attempts to solve these problems by using an airborne based subsystem that includes an airborne wireless repeater for repeating signals to a base station on the ground. See col. 1, lines 51-60. This is shown in figure 1 in which an airborne based subsystem (125), shown in more detail in figure 2, has a radiotelephone repeater (210). The repeater (210) receives signals from the radiotelephones (205) within the aircraft and relays them to an antenna (215) mounted on the outside of the aircraft. The repeater (210) thus relays signals to the base station on the ground. See col. 2, lines 53-59. The airborne repeater registers the radiotelephones in the aircraft with the ground based stations. See col. 3, lines 15-24. Accordingly, the radiotelephones in the aircraft can receive calls from the ground cells and calls can be handed-off when the aircraft leaves a cell. See col. 3, lines 41-64. In this way, Gilhousen augments the ground based cellular communication system by providing a repeater in the aircraft.

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b. The Rejection Of Claim 7 – The Asserted Baum/Gilhousen Combination Does Not Render Claim 7 Unpatentable Because It Does Not Meet All The Limitations Of The Claim

In the final Office Action, Baum is cited for teaching all the elements of claim 7 except for disclosing that the radio relay on the ground is replaced by an aircraft. Gilhousen, is cited for teaching that missing feature. However, even if the teachings of these two references are combined as asserted in the final Office Action, the combination would not satisfy all the limitations of claim 7.

Specifically, claim 7, which is the only independent claim under appeal, is directed to “replacing a radio relay in a telecommunication network.” The claim recites, along with several other elements, replacing the radio relay by “an aircraft (1) of the airplane or glider type which has propulsion means (2) enabling said aircraft (1) to maintain itself, to move itself, and to orient itself solely at high altitudes.” However, the asserted combination of references does not meet this limitation.

First, the Examiner acknowledges that Baum does not teach replacing a radio relay with an aircraft, and cites Gilhousen for teaching that missing limitation. The Examiner asserts at the bottom of page 2 of the final Office Action that Gilhousen “teaches a method where a ground based radio relay system can be replaced by means of airborne apparatus....” However, as discussed above, Gilhousen does not teach replacing a ground based radio cell with the airborne based repeater. Rather, Gilhousen’s airborne based repeater augments the ground base cellular radiotelephone system. Gilhousen does not teach or suggest replacing any of the ground based cellular systems since Gilhousen’s airborne repeater must communicate with the ground based

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cells for the airline passenger's radiotelephones to operate properly. Accordingly, even if a person of ordinary skill would have combined the teachings of Baum with Gilhousen the combination would not satisfy all the limitations of claim 7. Hence, the combination does not render claim 7 unpatentable for at least this reason.

Second, at page 2 of the final Office Action the Examiner asserts that Baum discloses an aircraft that includes a propulsion means that enables an aircraft to maintain itself, to move itself and to orient itself solely at high altitudes. The Office Action cites Baum at page 6, line 23 through page 7, line 3, and page 11, lines 21-28, and figure 2 element 15, for disclosing this element of claim 7.

Baum, at page 6, lines 23-29 describes a navigation means that includes "a plurality of propulsion units." At page 6, line 32 through page 7 line 3, Baum describes the propulsion units being used during deployment of the strato-state platform (SSP) to "initially bring the platform according to the invention to the desired location whereupon the navigation system maintains the platform geo-stationary." Baum also discloses at page 13 lines 19-27 that the propulsion units are used during the launch of the SSP, by stating that "at that position a third command disconnects the auxiliary balloons 51 whereupon the platform 50 rises to position D and from there by the driving force of its own lift and with the aid of its own suitably programmed navigational system, or alternatively by control from the ground station 59, reaches the desired location in the stratosphere."

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Applicant respectfully submits that Baum does not teach or even suggest that the propulsion units disclosed in Baum operate “to orient itself solely at high altitude.” (emphasis added) The portions of Baum the Examiner relies upon in the final Office Action to reject the claim, which are noted above, indicate that the propulsion units, which are part of the navigation means, operate as part of the launch process and not to operate solely at high altitude as required by claim 7.

In the Advisory Action the Examiner attempts to justify his position that Baum teaches operating the propulsion units solely at high altitude. However, none of these portions of Baum teach the claim limitation. The Examiner asserts in the Advisory Action that “Baum discloses a method where the navigation means in the aircraft controls the location and position of the platform in response to the altitude and spatial data (see page 3, lines 10-13).” This portion of Baum, however, does not teach that the navigation means operates solely at high altitude. It merely indicates that the navigation means controls location and position, but not solely at high altitude.

The Examiner, in the Advisory Action, also states that on “page 6, lines 23-29, Baum further disclose that the propulsion unit includes a servo motor to provide the right spatial position as required.” In this paragraph Baum discusses the navigation means which includes a plurality of propulsion units, however, it does not teach that the navigation means is used solely at high altitude. Rather, Baum discloses at page 13, lines 25-26 that the navigation system is used during the launch process to aid in the launch.

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The Examiner also asserts in the Advisory Action that “Baum also discloses a method where the balloon is maintained at an altitude of 22-26 kms, the exact altitude depending on the geographic location.” This disclosure in Baum also does not teach or suggest the claim limitation of the navigation means being used solely at high altitude. As discussed above, Baum discloses using the navigation system to aid in the launch process. Hence, even if Baum’s device operates at the altitude asserted in the Advisory Action that does not mean that the navigation means is not used at other altitudes, such as during the launch process.

It is respectfully submitted that a person of ordinary skill would have understood that Baum does not teach that the navigation system is used solely at high altitude as required by claim 7. Accordingly, Appellant respectfully submits that Baum does not teach or suggest that the navigation means operates solely at high altitude.

Gilhousen is relied upon for allegedly disclosing that a ground based radio relay system can be replaced by means of airborne apparatus in order to enable the ground based cellular radio system to source a call to the aircraft telephone. Accordingly, even if Baum were combined with Gilhousen, as asserted in the Office Action, all the limitations of claim 7 would not be met since Baum does not teach or suggest that the propulsion units operate solely at high altitude. Hence, the Baum/Gilhousen combination asserted in the Office Action does not render claim 7 unpatentable.

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c. The Rejection Of Claims 5, 6 and 9

Claims 5, 6 and 9 contain by reference all the limitations of claim 7, and hence, are patentable for at least the same reasons.

Further, the asserted combination of Baum and Gilhousen also does not render claim 9 unpatentable because the combination does not meet limitation recited in that claim. Claim 9 states that “the replaced relay is a satellite relay.” The final Office Action, however, does not state where the references, alone or in combination, disclose this feature.

The Examiner states that Baum fails to disclose “that the radio relay on the ground is replace [sic, replaced] by said aircraft.” Gilhousen is cited to satisfy this deficiency in Baum. The Examiner states that Gilhousen “teaches a method where a ground based radio relay system can be replaced by means of airborne apparatus in order to enable the ground based cellular radio system to source a call to the aircraft telephone. See col. 3, lines 2-10.”

Even if the Examiner assertion is assumed correct, that Gilhousen teaches replacing a ground based radio relay system with an airborne apparatus, modifying Baum based on that alleged teaching would not meet the limitations in claim 9. The asserted combination would not replace a satellite relay, but rather allegedly replaces a ground based relay. Accordingly, the asserted combination does not include all the limitations in claim 9, and hence, does not render claim 9 unpatentable.

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2. Claims 2-4 Are Not Rendered Unpatentable Under 35 U.S.C. §103(a) As Being Obvious Over Baum In View Of Gilhousen And Wong.

Claims 2-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Baum and Gilhousen in view of Wong. Applicant respectfully traverses the rejection.

Claims 2-4 contain by reference all the limitations of claim 7, and hence, are patentable for at least the same reasons. Further, Wong does not satisfy the deficiency of Baum, and hence does not render claims 2-4 unpatentable. Claims 2-4 also are patentable over the Baum/Gilhousen/Wong combination asserted in the final Office Action because of limitations recited only in those claims, as discussed below.

a. The Prior Art - Wong

Wong relates to lighter-than-air platforms (10) residing at high altitude, such as in the stratosphere, which are used for telecommunications. See Abstract and figure 1. Wong discloses a Corona Ion Engine that uses ions in the atmosphere to generate thrust for the platform. See page 15, line 27 through page 22, line 16.

b. The Rejection Of Claim 2 – Wong, Alone Or In Combination With Baum And Gilhousen, Does Not Teach Or Suggest Providing An Airplane Or Glider Type Aircraft With A Plasma Thruster.

Claim 2 specifies that the propulsion means of the airplane or glider type aircraft recited in claim 7 includes at least one plasma thruster which operates using plasma created from the surrounding air at high altitude.

In the final Office Action the Examiner admits that Baum and Gilhouse do not disclose use of a plasma thruster, and cites Wong to make up for this deficiency.

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Wong relates to a Sky Station 10, shown in figure 1, which is a lighter-than-air platform that uses two helium airships 12 each having a Corona Ion Engine 20. See figure 1 and page 5, line 12; page 13, lines 2-4; and page 16, lines 8-9.

However, like Baum, Wong relates to lighter-than-air type aircraft, not airplane or glider type aircraft recited in the claims. Wong, either alone or considered along with the teachings of Baum and/or Gilhousen, does not teach or suggest using the Corona Ion Engine on anything other than a lighter-than-air type aircraft. For example, even if the balloon platform of Baum were replaced with the airplane shown in figure 1 of Gilhouse, it is respectfully submitted a person of ordinary skill in the art would not have been motivated to modify Gilhouse's airplane to use Wong's Corona Ion Engine. This is because Wong discloses that the Corona Ion Engine is for use with lighter-than-air platforms, not airplanes or glider type aircraft. See, for instance, page 17, lines 20-25, in which Wong indicates that the Corona Ion Engine is used with lighter-than-air platforms. In fact, Wong suggests that the Corona Ion Engine should not be used with airplane structures because airplanes derive their lift by achieving a minimum speed whereas lighter-than-air platforms ascend at a lower speed allowing the Corona Ion Engine to be used for navigation during the ascent. See page 17, lines 23-25. Accordingly, a person of ordinary skill would not have been motivated to use the Corona Ion Engine with an airplane or glider type aircraft, as required by the claims.

Further, Wong discloses that the Corona Ion Engines "can be used at all altitudes" and in fact are used during launch "to navigate the Sky Station during the ascent of the Station from the

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ground up through the troposphere to the Stratosphere.” See page 16, line 8 and page 17, lines 21-23. Accordingly, Wong teaches away from using a plasma thruster solely at high altitude, as required by the claims.

Accordingly, it is respectfully submitted that it would not have been obvious to a person of ordinary skill in the art to have used Wong’s Corona Ion Engines on an airplane or glider type aircraft. Hence, the asserted Baum/Gilhousen/Wong combination does not render claim 2 obvious.

c. The Rejection Of Claim 3 – Wong, Alone Or In Combination With Baum And Gilhousen, Does Not Teach Or Suggest Providing At Least One Solar Generator Cooled By Convention With The Surrounding Air At High Altitude.

Claim 3 recites “providing said aircraft with at least one solar generator (5) cooled by convention with the surrounding air at said high altitude.” The Examiner admits that neither Baum nor Gilhousen teach this feature, and he relies on Wong to satisfy that deficiency. The Examiner asserts in the final Office Action that Wong, at page 22, lines 17-27 “indicates that heat is discharged to the surrounding gas,” and that this teaches the limitation in claim 3 that is missing from the other two references.

The Examiner ignores limitations in claim 3. Claim 3 specifically requires that the solar generator is cooled by convention “with the surrounding air at said high altitude.” The portion of Wong the Examiner relies upon does not disclose this limitation. The portion of Wong the Examiner relies upon merely describes how solar power can be used to generate electricity. It does not teach cooling a solar generator by convention using the surrounding air at the high altitude. The Examiner appears to assert that in Wong’s discussion at page 22, lines 20-25 of

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using solar power to heat the air surrounding a surface meets the claim limitation. However, Wong neither teaches nor suggests that the gas Wong discloses heating is the air at the high altitude surrounding the solar generator. Rather, the gas that Wong discloses heating appears to be a gas contained in a manner to that allows it to be harnessed to produce electricity. See page 22, lines 23-25.

It is respectfully submitted that a person of ordinary skill in the art would understand that the gas Wong discloses heating does not cool a solar generator by convection by using the high altitude air surrounding the solar generator. Accordingly, even if the Baum/ Gilhousen combination were modified to use the solar power panels described by Wong, all the limitations of claim 3 would not be met. Hence, the asserted Baum/Gilhousen/Wong combination does not render claim 3 unpatentable.

d. The Rejection Of Claim 4 – Wong, Alone Or In Combination With Baum And Gilhousen, Does Not Teach Or Suggest Providing At Least One Storage Battery Having Superconductivity Components.

Claim 4 recites “providing said aircraft with at least one storage battery (7) having superconductivity components. The Examiner, in the final Office Action, ignores the limitations of the claimed storage battery, since Wong does not teach or suggest using superconductivity components in a storage battery.

In the final Office Action the Examiner, in rejecting claim 4, merely states that “Wong further teaches the use of at least one storage battery in the aircraft. See page 15, lines 17-26.” That portion of Wong, however, does not even mention superconductivity components. Rather, that portion of Wong describes “Battery Power” and merely discloses that “fuel cells” and

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“chemical batteries or other means for storing electrical power known to the art may be used.”

See page 13, lines 21 and 25-26.

Accordingly, even if the Baum/Gilhousen combination was modified based on Wong’s disclosure of “Battery Power,” the combination would not use a storage battery having superconductivity components as required by claim 4. Hence, the asserted combination does not render claim 4 unpatentable.

For at least these reasons Appellant respectfully requests the Board to reverse the rejections in the final Office Action.

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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23373
CUSTOMER NUMBER

Date: January 3, 2007

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CLAIMS APPENDIX

CLAIMS 2-7 and 9 ON APPEAL:

1. (canceled).

2. (rejected): The method according to claim 7, further comprising the step of providing said propulsion means (2) as at least one plasma thruster which operates using plasma created from the surrounding air at said high altitude.

3. (rejected): The method according to claim 7, further comprising the step of providing said aircraft with at least one solar generator (5) cooled by convection with the surrounding air at said high altitude.

4. (rejected): The method according to claim 7, further comprising the step of providing said aircraft with at least one storage battery (7) having superconductive components.

5. (rejected): The method according to claim 7, further comprising the following steps:

- on the ground, securing said aircraft (1) to an independent transporter (3);

- causing said transporter (3) to take said aircraft (1) to the high altitude at which it is to operate, making use solely of said propulsion means ;

- causing said transporter (3) to release said aircraft (1) at the altitude (H) and at least approximately at the intended location of its operating station; and

- if necessary, causing said aircraft (1) to use said propulsion means (2) to put said aircraft finally on station and to take up its proper orientation.

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6. (rejected): The method according to claim 5, further comprising the step of providing said transporter (3) with at least one balloon (3) suitable for rising to the high altitude.

7. (rejected): A method of replacing an existing radio relay in a telecommunications network comprising a plurality of radio relays, the method comprising the steps of:
replacing said existing radio relay (10) by an aircraft (1) of the airplane or glider type which has propulsion means (2) enabling said aircraft (1) to maintain itself, to move itself, and to orient itself solely at high altitude;

providing said aircraft with transceiver means (15) for radio waves (16, 17); and
taking said aircraft (1) to an altitude and a position such that said transceiver means (15) lies in the same direction, relative to at least one user (11, 12) of said telecommunications network (RT), as said replaced relay (10), with operation between said transceiver means (15) and said user (11, 12) being performed via an already existing interface without modification thereof, thereby avoiding the need to modify the pointing direction of an antenna of said user.

8. (canceled).

9. (rejected): The method according to claim 7, wherein the replaced relay is a satellite relay, and said high altitude to which said aircraft is taken is in the stratosphere above both the altitude of civilian air links and the altitude of earth's cloud ceiling.

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EVIDENCE APPENDIX:

Appellant submits, pursuant to 37 C.F.R. § 41.37(c)(1)(ix), that no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence, other than the prior art references of record, have been relied upon by Appellant in the appeal.

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RELATED PROCEEDINGS APPENDIX

No proceedings have been identified above in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii).

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SUBMISSION OF APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

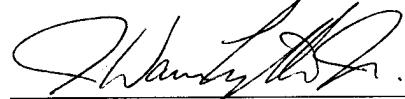
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Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. The statutory fee of \$500.00 is being charged to Deposit Account No. 19-4880 via EFS Payment Screen. The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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Date: January 3, 2007